

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-253

LANCE HENRY AND CRYSTAL
HENRY

APPELLANTS

V.

AMANDA PARKER

APPELLEE

Opinion Delivered February 4, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION [NO. CV-2006-6298]

HONORABLE TIM FOX, JUDGE

AFFIRMED IN PART; REVERSED
AND REMANDED IN PART

JOHN MAUZY PITTMAN, Judge

The parties contracted for the sale of a house. Appellants were the sellers, appellee the purchaser. Appellants demanded and received \$2500 in earnest money, which was held in escrow pending inspection of the property. Because the repairs required pursuant to the inspection would have cost significantly more than the \$1000 limit that the appellants-vendors were obligated to pay pursuant to the contract, the appellee refused to complete the purchase. When both appellants and appellee sought the earnest money from Stewart Title of Arkansas, the company that was holding it in escrow, the title company interpled the earnest money deposit into the registry of the court and commenced the current action. Appellants prevailed on the merits below, but argue on appeal that the trial court erred in failing to award them “all costs of the proceeding,” prejudgment interest, and a larger attorney’s fee. We affirm in part and reverse and remand in part.

Appellants first argue that the trial court erred in failing to award as costs reimbursement for attorney fees of \$762 and a filing fee of \$140 paid from the earnest money to Stewart Title. The award to Stewart Title was authorized by Ark. R. Civ. P. 22(b), which allows the trial court to make an award of reasonable litigation expenses, including attorney's fees, to a plaintiff who, having deposited money or property in the registry of the court, disclaims any interest in the money or property that is the subject of the interpleader action. The question on appeal is whether the trial court erred in ruling that these fees and costs should be deducted from appellants' recovery. We think that it did.

The parties' contract provided that the sellers were entitled to the earnest money in the event that the buyer should fail to comply with the contract. Furthermore, the contract expressly provided that "[t]he prevailing party in any legal proceeding related to this contract is entitled to recover reasonable attorney fees and *all costs* of such proceeding incurred by the prevailing party." (Emphasis added.) The use of the term "all costs" is significant. The term is an expansive one and has been interpreted as such by our supreme court, which has refused to read into it even the most elementary qualifying language that the costs recovered must have been reasonable. See *Phi Kappa Tau Housing Corp. v. Wengert*, 350 Ark. 335, 86 S.W.3d 856 (2002). In light of this precedent, we are obliged to hold that the trial court erred in not permitting appellants to recover the fees and costs paid from the earnest money to Stewart Title.

We likewise agree that the trial judge erred in failing to award prejudgment interest. Prejudgment interest is compensation for recoverable damages wrongfully withheld from the

time of the loss until judgment; this interest must be allowed for any injury where, at the time of loss, damages are immediately ascertainable with reasonable certainty. *TB of Blytheville, Inc. v. Little Rock Sign & Emblem, Inc.*, 328 Ark. 688, 946 S.W.2d 930 (1997). Where prejudgment interest is collectible at all, the injured party is always entitled to it as a matter of law. *Id.* Here, the contract gave appellants a right to the earnest money at the time of appellee's breach. Because both the time and amount of the loss were immediately ascertainable, and because prejudgment interest is allowed even in interpleader actions, *see US Able Life v. Fow*, 307 Ark. 379, 820 S.W.2d 453 (1991), appellants were entitled to it as a matter of law.

We do not, however, agree with appellants' argument that the trial court erred in failing to award a larger attorney's fee. We note that, unlike the provision requiring payment of "all" costs, the parties' contract allowed the recovery only of *reasonable* attorney's fees. Given that this was a simple contract case, that the amount in controversy was only \$2500, that there were no overriding personal or moral issues involved, and that appellant Lance Henry's father served as their attorney, we cannot say that the award of \$1000 in attorney's fees was unreasonable as a matter of law.

Affirmed in part; reversed and remanded in part.

GLADWIN and GLOVER, JJ., agree.